

BOOTHBAY HARBOR PLANNING BOARD

MINUTES OF PUBLIC HEARING

March 13, 2019

MEMBERS PRESENT: Jon Dunsford, First Alternate
William Hamblen, Chairman
John Hochstein
Margaret Perritt
Chris Swanson

CEO, Geoff Smith

In addition to these typed minutes, audio recordings are available to be listened to at the Boothbay Harbor Town Office.

1. Old Business

- **Approval of January 9, 2019 Minutes**

2. New Business

- **Katama Acquisitions LLC, represented by Steve Roberge, 4 and 5 Nahanada Road, Tax Map 11, Lots 9 and 8B, Applicant proposes to construct a new storage building, a swimming pool, and expand existing parking lots, requiring Planning Board approval under Chapter 170, Article V, Section 170-61 of the Code of the Town of Boothbay Harbor.**
- **Bob Bua, DBA Downeast Ice Cream Factory, 185 Townsend Ave., Tax Map 22, Lot 17, Applicant proposes to operate an ice cream shop, requiring Planning Board approval under Chapter 170, Article V, Section 170-61 (H) of the Code of the Town of Boothbay Harbor.**

3. Other Business

- **Jane Carpenter, to discuss the possibility of creating an ordinance to address blasting.**

Chairman Hamblen called the March 13, 2019 Planning Board meeting to order at 7:00 p.m., stating they needed to upgrade Jon Dunsford to a full voting member for a quorum in Thomas Churchill's absence. Chris Swanson made the **motion**. John Hochstein **seconded**. **Unanimous approval.**

OLD BUSINESS

Margaret Perritt **motioned** to approve the minutes of the January 9th meeting. Chris Swanson **seconded**. **Unanimous approval.**

NEW BUSINESS

Chairman Hamblen stated there were two applications that evening and would begin with Bob Bua of Downeast Ice Cream Factory.

Bob Bua explained he is the current owner of Downeast Ice Cream Factory next to McSeagull's on Pier One. After Bua realized that it was tight to make ice cream at this location he decided to look for a second location and found the space to rent next to the House of Pizza at the Meadow Mall. Bua stated they would make the ice cream in the back and sell it in the front where they would have an ice cream parlor style restaurant. Since the new location has heat and air conditioning, Bua was planning to keep it open year-round (except for maybe January and February) with normal business hours. Bua will have a food license like he does on Pier One.

Chairman Hamblen stated this was a permitted use and it was not impacting parking or sewer, etc.

Tom Minerich, from the audience, stated he felt it was excellent.

Chairman Hamblen started the Finding of Facts process.

Findings of Fact:

1. The owner is Ellis Commercial, represented by Bob Bua, relating to the property located at 185 Townsend Ave. Property taxes on account of the premises for which the approval is requested have been paid in full.
2. The property is in the General Business zoning district. The property is further identified as Assessor's Tax Map/Lot: 22/17.
3. The applicant proposes to create a retail ice cream parlor, and location to produce ice cream, which, in accordance with **Chapter 170, Article V, §170-61**, requires site plan review by the Planning Board.

Conclusions

Based on the above stated facts, the Planning Board makes the following conclusions:

Right, Title or Interest in the Property

The applicant X has/ **has not** demonstrated sufficient Right, Title or Interest on the property in question.

Motion made by Chris Swanson, seconded by Margaret Perritt

Vote Unanimous All In Favor Against

Chapter 170, Article V, §170-61

Site plan review standards.

A. Utilization of site. The plan for the development must reflect the natural capabilities of the site to support development. Buildings, lots and support facilities must be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas must also be preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction and limiting the extent of excavation.

B. Traffic access.

(1) Adequacy of road system.

(a) Vehicular access to the site must be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate 50 or more peak-hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one mile of any entrance road which are functioning at Level of Service D or better prior to the development must function, at a minimum, at Level of Service D after development. If any such intersection is functioning at Level of Service E or lower prior to the development, the project must not reduce the current level of service. This requirement may be waived by the Planning Board if the project is located within a growth area designated in the Town's adopted Comprehensive Plan and the Board determines that the project will not have an unnecessary adverse impact on traffic flow or safety.

(b) A development not meeting this requirement may be approved if the applicant demonstrates that:

[1] A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or

[2] The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guaranty acceptable to the municipality.

(2) Access into site. Vehicular access to and from the development must be safe and convenient.

(a) Any driveway or proposed street must be designed to provide the minimum sight distance as required by § [170-54C\(8\)](#).

(b) Points of access and egress must be located to avoid hazardous conflict with existing turning movements and traffic flows.

(c) The grade of any proposed drive or street must not be more than plus or minus 3% for a minimum of two car lengths, or 40 feet, from the intersection.

(d) The intersection of any access/egress drive or proposed street must function at Level of Service D following development if the project will generate 100 or more peak-hour trips or at a level which will allow safe access into and out of the project if fewer than 100 peak-hour trips are generated.

(e) Where a lot has frontage on two or more streets, the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic and pedestrian hazards. Access from other streets may be allowed by the Planning Board if it finds if it is safe and does not promote shortcutting through the site.

(f) Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands and traffic controls within public streets.

(g) Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

(h) The following criteria must be used to limit the number of driveways serving a proposed project:

(1) No use which generates fewer than 100 vehicle trips per day shall have more than one two-way driveway onto a single roadway. Such driveway must be no greater than 30 feet wide.

(2) No use which generates 100 or more vehicle trips per day shall have more than two points of entry from and two points of egress to a single roadway. The combined width of all accessways must not exceed 60 feet.

(3) Accessway location and spacing. Accessways must meet the following standards:

(a) Private entrances/exits must be located at least 50 feet from the closest unsignalized intersection and 150 feet from the closest signalized intersection, as measured from the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.

(b) Private accessways in or out of a development must be separated by a minimum of 75 feet where possible.

(4) Internal vehicular circulation. The layout of the site must provide for the safe movement of passenger, service and emergency vehicles through the site.

(a) Nonresidential projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of WB-40 vehicles.

(b) Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).

(c) The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.

(d) All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction.

C. Parking layout and design. See § 170-50.

D. Pedestrian access.

(1) The site plan must provide for a system of pedestrianways within the development appropriate to the type and scale of the development. This system must connect the major building entrances and exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in an open space or recreation areas. The system must be designed to connect the project to residential, recreational, and commercial facilities, schools, bus stops, and

existing sidewalks in the neighborhood or, when appropriate, to connect to amenities, such as parks or open space on or adjacent to the site.

(2) When an existing or planned sidewalk is interrupted by a proposed project entrance, the sidewalk must be constructed and marked to distinguish it as a sidewalk or cross walk in compliance with all applicable slopes and markings. Furthermore, if street vegetation or trees exist on an adjacent property, like or similar vegetation or trees must be planted on the new site. In urban situations, a widening of a sidewalk onto private property to encourage local commerce and improved streetscape should be encouraged. Benches, sculptures, planters and other street furniture should be encouraged.

E. Buildings.

(1) Building placement.

(a) The site design should avoid creating a building surrounded by a parking lot.

(b) In urban built-up areas, buildings should be placed close to the street, in conformance with existing adjacent setbacks. Parking should be to the side preferably in the back.

(c) In rural uncongested areas, buildings should be set well back from the road to conform to the rural character of the area. If the parking is in front, a fifteen-foot or greater landscape buffer between the road and the parking lot shall be provided. Unused areas should be kept natural, as field, forest, wetland etc.

(d) Where two or more buildings are proposed, the buildings should be grouped and connected with sidewalks. Tree plantings should be used to provide shade and break up the scale of the site. Parking should be separated from the building by a minimum of five to 10 feet. Planting should be provided along the building edge, particularly where building facades consist of long or unbroken walls.

(2) Setback and alignment of buildings. Where is a reasonably uniform relationship between the front walls of buildings and the street, new buildings must be placed on a lot in conformance with the established relationship. For buildings on corner lots, the setback relationship of both streets should be maintained. The creation of empty corners should be avoided through the placement of the building and other site features.

(3) Building entrances.

(a) The main entrance to the building should be oriented to the street, unless the parking layout or grouping of the buildings justifies another approach, and should be clearly identified as such through building and site design, landscaping, and signage.

(b) At the building entrance areas and dropoff areas, site furnishings such as benches and sitting walls and, if appropriate, bicycle racks shall be encouraged.

(c) Additional plantings may be desirable at these points to identify the building entrance and to complement the pedestrian activity at this point.

(4) Building illumination.

(a)

Building facades may be illuminated with soft lighting of low intensity that does not draw inordinate attention to the building. The light source for the building façade illumination must be concealed.

(b) Building entrances may be illuminated using recessed lighted in overages and soffits or by use of spotlighting focused on the building entrance with the light source concealed (e.g., in landscaped areas.) Direct lighting of limited exterior building areas is permitted when necessary for security purposes.

(5) Drive-through facilities. Any use that provides drive-through service must be located and designed to minimize the impact on neighboring properties and traffic circulation. No drive-through facility shall be located in an area of the site adjacent to a residential use or residential zone. Communication systems must not be audible on adjacent property in a residential use. Vehicle access to the drive-through shall be through a separate lane that prevents vehicle queuing within normal parking areas. A minimum of 12 queuing spaces must be provided to prevent any vehicles from having

to wait on a public way, within the entry from the street or within designated parking areas. The drive-through must not interfere with any pedestrianway or bicycle path.

E. Storage of materials.

(1) Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse (cross reference § [170-34](#)) must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential use and users of a public way.

(2) All dumpsters or similar large collection receptacles for trash or other waste must be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it must be screened by fencing or landscaping.

(3) Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter children from entering the premises must be provided and maintained in good condition.

G. Water supply: must comply with § [170-106B\(6\)](#), except that the development shall be served by public water if it is available within 500 feet of the project parcel.

H. Sewage disposal.

(1) Must comply with § [170-106B\(7\)](#) except that the development shall be served by public sewer if it is available within 500 feet of the project parcel. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system must occur if and when the subsurface system needs to be replaced.

(2) When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system must be owned and maintained in common by an owners' association. Covenants in the deeds for each lot must require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

(3) Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction, and dilution.

I. Utilities. The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be underground.

J. Natural features. The landscape must be preserved in its natural state insofar as practical by limiting tree removal to access, parking areas, utility installation and areas within 25 feet of a building unless approved by the Planning Board as part of a landscaping plan. In addition, disturbance and compaction of soils shall be minimized and existing vegetation shall be retained insofar as practical during construction. No trees shall be removed prior to final approval. Extensive grading and filling must be avoided as far as possible.

K. Water quality protection. All aspects of the project must be designed so that:

(1) No person shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that may run off, seep, percolate or wash into surface or ground waters so as to contaminate, pollute or harm such waters. No person shall cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness, or be harmful to human, animal, plant or aquatic life.

(2) All storage facilities for fuel, chemicals, chemical or industrial wastes and biodegradable raw materials must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshal's office.

L. Hazardous, special and radioactive materials.

(1) The handling, storage and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies.

(2) No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least 75 feet from any lot line, or 40 feet in the case of underground storage. All materials must be stored in a manner and location which complies with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state and local regulations.

M. Shoreland relationship.

(1) The development must not adversely affect the water quality or shoreline of any adjacent water body or wetland. The development plan must provide for access to abutting navigable water bodies for the use of the occupants of the development as appropriate.

(2) When a proposed development is immediately visible from a great pond, river or stream, the development must be designed so that it fits harmoniously into the visual environment when viewed from the water body. In predominantly natural environments, site clearing must be minimized, natural vegetation must be maintained adjacent to the shoreline to soften the appearance of the development and vegetation must be retained or provided to minimize the visual intrusion of the development. In developed shoreland environments, the appearance of the new developments when viewed from the water must be compatible with the existing visual character in terms of scale, massing and height to the maximum extent possible. Storage and service areas must be screened or landscaped to minimize their visual impact.

N. Capacity of the applicant. The applicant must demonstrate that he/she has the financial and technical capacity to carry out the project in accordance with this chapter and the approved plan.

O. Solid waste management. The proposed development must provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

P. Historic and archaeological resources. If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction and limiting the extent of excavation. All work shall be in accordance with the Secretary of Interior's Standards for the Treatment of Historic Properties.

Q. Floodplain management. If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the Town's floodplain management provisions.

Editor's Note: See Art. VII, Floodplain Management.

The applicants X *have/* _____ *have not* demonstrated that this proposal meets the criteria set forth in **Chapter 170, Article V, §170-61** of the Town of Boothbay Harbor Zoning Ordinance.

Motion made by Chris Swanson , **seconded by** Margaret Perritt

Vote X All **In Favor** **Against**

If the criteria have not been met, the reasons are explained below;

Decision

Based on the above findings of fact and conclusions, the plans and supporting information submitted, testimony and evidence submitted at the Planning Board meetings on the application, on motion made by Chris Swanson and seconded by Margaret Perritt, the Planning Board

X Approves Denies

this application subject to the conditions of approval set forth below, all for the reasons set forth in the findings and conclusions.

Vote X All In Favor Against

Conditions of Approval or Addendums

(None)

The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.

Appeal

Any appeal from this decision must be made to the Board of Appeals within 30 days after the date of the decision of the Planning Board, in accordance with the Article X of the Land Use Ordinance.

Chairman Hamblen stated they would now hear from Katama Acquisitions LLC, represented by Steve Roberge.

Owner, Shawn Chapps spoke first stating that he was planning to reduce the guest rooms in the lodge from 30 to 22 and the seating capacity of the restaurant from a capacity of 135 to 80 people. Chapps stated his plan was mostly about parking as there was very little there now.

Steve Roberge, of SJR Engineering, explained there would be no changes to the buildings but parking lots would be created behind both the lodge and the restaurant with one-way drives to funnel the traffic in the best direction to flow back out onto the roads leading away from Sprucewold. This would involve taking down a number of trees, erecting a stockade fence two feet in from the abutters to allow for maintenance on both sides and a new landscaped buffer planted against the fence. The fence would also minimize light from cars pulling in after dark from the abutters.

Roberge stated the creation of the drives with parking behind the buildings would allow fire trucks access to all sides of them. There would be some handicapped spaces.

There was also a plan to put in a swimming pool (16' x 30' x 8' deep) in front of the lodge with a small storage shed nearby to store equipment for the pool. Roberge pointed out the pool would provide a source of water in the event of a fire.

Roberge stated the drives and parking lots would not be paved but have a surface of crushed stone. There would only be LED downcast lighting according to requirements.

There would be a curb along the edge of the parking area behind the lodge to direct storm water to run down to a catch basin called a "soil filter pond." This is a pond that acts like a septic system that filters the water down to a rubber mat (to keep ground water from coming into the pond) which only allows the water to leave through 1/2" holes which is metered to control the amount. The water moves through in between 24 - 48 hours. There are a total of three of these ponds planned, the other two being closer to the restaurant. [Roberge pointed out one of these, which he had designed, was working perfectly in town by Pinkham's market.]

Roberge stated there would be an area behind the restaurant for outdoor dining. There would be a grassed area to the left of the restaurant.

They would provide erosion control during construction.

There is also an existing beach path beside the restaurant that will be continued to be available for people who wish to use it. [They are trying to contact Terry Leighton to see if there is a legal access to reach the path that continues past the property.]

The construction schedule is to complete the restaurant by Memorial Day 2020 and the lodge the following year.

There is still one more permit for a storm water plan from the DEP which they will submit once they find out from the Planning Board if they are going in the right direction.

Jon Dunsford pointed out they would need to include directions to maintain the "soil filter ponds."

Chris Swanson asked if they were adding enough parking spaces for the patron and the staff or the patrons only.

Roberge responded they were trying to add as many spaces as possible since there were none there now, but his understanding is a space per guest room is required and 9 spaces per 1000 square feet restaurant.

Chairman Hamblen stated a pre-existing, non-conforming structure cannot be expanded but according to the town lawyer a parking lot is not an expansion so does not have to adhere to the required number of spaces in the ordinance.

Jon Dunsford stated whether the pool is for use by only people staying at the lodge or by the general public, which would make it a separate use needs to be in the business plan.

CEO, Geoff Smith stated they needed to consult the town lawyer on this.

Chairman Hamblen stated tree cutting is permitted since it is not in the Shoreland zone, however cut trees and slash cannot be left on the ground to become a fire hazard. Also, according to ordinance 170.69 (J) Natural features: The landscape must be prepared in it's natural state insofar as practical by limiting tree removal to access, parking areas, utility installation and areas within 25 feet of a building unless approved by the Planning Board as part of a landscaping plan.

Chairman Hamblen pointed out that post development must be no greater than pre-development and could see that the business plan has not been kept updated with the site plan. Small discrepancies are not an issue but there is one that is 6% more in the post-construction and should be adjusted. They would also need a lighting plan to get approval.

Chairman Hamblen opened up the meeting for public comment.

1. Jim Smith, an abutter, expressed concern about the trees being cut down to create the parking areas and wondered if there were places they could go to see a similar situation.

2. David Plunkett expressed concern about the location that the lodge parking lot will enter the street.

Chairman Hamblen reminded everyone the Planning Board is not going to be voting on desirability or general character but on whether or not the application meets zoning codes.

3. Bill Cossaboon, also an abutter, expressed concern about his water line being affected by the construction of the parking lot behind the lodge. Cossaboon also asked if construction could take place outside of the summer season.

4. Walter _____, another abutter, stated he was overall pleased to see the property being developed as it would be a shame to see it sit there and decay as it has been but had just one concern about storm water runoff obstructing access to his property.

5. Susan Otto Goodell, President of Sprucewold Association, gave summaries of emails from two members who could not be present. Both were in support of the project for a number of reasons.

6. Frederick _____, who has a property in Sprucewold wondered if the cars behind the lodge could face toward the lodge so their headlights would not shine toward the abutters.

The Planning Board set a date for a site visit on Wednesday, April 3rd at 3:00 p.m.

03/13/19

Page 11 of 11

OTHER BUSINESS

Chairman Hamblen invited Jane Carpenter to come forward.

Jane Carpenter explained that approximately two months prior her house had been rattled by blasting that was done somewhere nearby. When Carpenter called CEO, Geoff Smith, he drove around the neighborhood to see if he could locate the source of the blasting. Since there is no ordinance, contractors are not required to get a permit to blast or even notify authorities when they are planning to blast. Carpenter stated it is not only a public safety issue but as a property owner in town, felt she should have been notified.

Jane Carpenter provided the board with information she had gathered to support her argument.

Jon Dunsford cautioned without a pre-blast survey there would be little recourse if damage occurs.

Margaret Perritt stated the ceilings on the third floor of her house had been damaged by blasting years ago even though she'd heard it was going to happen the day before.

Chris Swanson suggested forming a sub-committee to start working on it.

Margaret Perritt felt Jane Carpenter would be an asset to the sub-committee.

Chairman Hamblen stated the board should read through the materials they had been provided with and set up the sub-committee at their next meeting.

Elbridge Giles spoke about his experience with blasting in Boothbay Harbor and felt they should have people on the sub-committee who know something about it. Giles agreed to be on the sub-committee.

Chairman Hamblen suggested waiting to do their annual elections of the Planning Board offices for Thomas Churchill's return in May. The **consensus** of the board was **in favor** of this.

ADJOURN

The meeting was adjourned at 9:13 pm.

William Hamblen, Chairman

Kellie Bigos, Recording Secretary